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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,958	01/17/2002	Ake Lignell	REF/LIGNELL/551	6995

7590

04/22/2003

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EXAMINER

COE, SUSAN D

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 04/22/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/463,958

Applicant(s)

LIGNELL, AKE

Examiner

Susan Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The amendment filed January 21, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 15-16 have been added.
3. Claims 8-16 are pending.

Claim Rejections - 35 USC § 102

4. Claims 8, 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Pat. Appl. No. 57-105145 A for the reasons set forth on pages 2 and 3 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach using the xanthophyll as the active ingredient for treating dyspepsia. However, the reference does not specifically state that the xanthophyll is not the active ingredient. In addition, the reference teaches using the same composition as claimed, i.e. a composition comprising a xanthophyll, for treating the same disorder as claimed. Therefore, the xanthophyll in the reference composition must be an active ingredient. If the xanthophyll is not active in the reference composition then applicant's invention would not function as claimed.

5. Claims 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by European Pat. Appl. No. 0 770 385 A1 for the reasons set forth on page 3 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach using the

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composition to treat non-stress related dyspepsia; however, applicant's claims are drawn to treating any type of dyspepsia. Therefore, the reference is still considered to teach the claimed invention for the reasons discussed in the previous Office action.

6. Claims 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/37874 for the reasons set forth on pages 3 and 4 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach the claimed method because the reference only teaches using the xanthophylls to kill *H. pylori*. However, *H. pylori* infection causes ulcers. A known symptom of ulcers is dyspepsia. Therefore, in using the method taught by the reference, a person with dyspepsia would have been treated in the manner claimed by applicant.

Claim Rejections - 35 USC § 103

7. Claims 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '145 in view of WO '874 for the reasons set forth on page 4 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues against this rejection for the same reasons as in the 102 rejections over the individual references. Thus, the answers to the arguments can be found above.

8. No claims are allowed.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

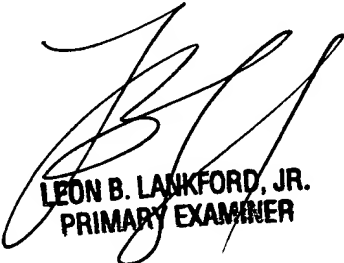
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
April 11, 2003


LEON B. LANKFORD, JR.
PRIMARY EXAMINER